IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 27TH SEPTEMBER 2007 / 5TH ASWINA 1929

WP(C).No. 20147 of 2004(W)

PETITIONER:

P.K.ANTHRAYOSE, AGED 55 YEARS,
S/O.K.A.KURIAKOSE, SUB DIVISIONAL OFFICER,
(TELEPHONES) PEERUMEDU, BHARATH SANCHAR NIGAM LTD., IDUKKI DISTRICT, R/A.CHIRAKKAL, PAMPADI PO, KOTTAYAM DISTRICT.

BY ADV. SRI.T.C.GOVINDA SWAMY
SRI.K.M.ANTHRU

RESPONDENTS:

1. **UNION OF INDIA, REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF COMMUNICATIONS (DEPARTMENT OF TELECOMMUNICATION), NEW DELHI.**
2. **THE CHAIRMAN, TELECOME COMMISSION, (DEPARTMENT OF TELECOMMUNICATIONS), NEW DELHI.**
3. **MEMBER SERVICES, TELECOM COMMISSION (DEPARTMENT OF TELECOMMUNICATIONS) NEW DELHI.**
4. **THE CHAIRMAN CUM MANAGING DIRECTOR, BHARATH SANCHAR NIGAM LTD., NEW DELHI.**
5. **THE CHIEF GENERAL MANAGER, TELECOMMUNICATION, BHARATH SANCHAR NIGAM LTD., KERALA CIRCLE, TRIVANDRUM.**

BY ADV. SRI.GOVINDH K.BHARATHAN, SC, BSNL
SRI.MATHEWS K.PHILIP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF MEMORANDUM BEARING NO.232-4/89-STD-II DTD. 16/19.11.1990 ISSUED BY THE 2ND RESPONDENT.

EXT.P2: COPY OF MEMORANDUM NO.ST/EK.203/8/XIV/4 DTD. 18/01/1991 ISSUED BY GENERAL MANAGER, TELECOM DISTRICT, ERNAKULAM.

EXT.P3: COPY OF ORDER DTD. 12/07/1991 RENDERED BY THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, IN O.A.NO.1120 OF 1990.

EXT.P4: COPY OF MEMO BEARING NO.ST/EK-203/8/XV/62 DTD. 01/12/1992 ISSUED BY THE GENERAL MANAGER, TELECOM DISTRICT, ERNAKULAM.

EXT.P5: COPY OF MAJOR PENALTY CHARGE MEMORANDUM BEARING NO.ETD/DISC/PKA/8 DTD. 16/09/1992 ISSUED BY THE DEPUTY GENERAL MANAGER, TELECOM, ERNAKULAM.

EXT.P6: COPY OF ORDER BEARING NO.ETD/DISC/PKA DTD. 12 MAY 1997 ISSUED BY THE DEPUTY GENERAL MANAGER (PLG.&ADMN.) TELECOM.

EXT.P7: COPY OF MEMORANDUM NO.ETD/DISC/PKA DTD. 26/09/1997 ISSUED BY GENERAL MANAGER, TELECOM, ERNAKULAM.

EXT.P8: COPY OF LETTER NO.ST-III/F-5/2000 DTD. 09/10/2000 ISSUED BY THE 5TH RESPONDENT.

EXT.P9: COPY OF REPRESENTATION DTD. 16/11/2000 TO THE 5TH RESPONDENT.

EXT.P10: COPY OF LETTER NO.15-32/2000-STD-IIDTD. 22/03/2001 FROM DEPT. OF TELECOMMUNICATIONS – 1ST RESPONDENT.

EXT.P11: COPY OF REPRESENTATION DTD. 18/06/2001 ADDRESSED TO THE 5TH RESPONDENT.

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EXT.P12: COPY OF LETTER BEARING NO.ST-III/3-25/2001-PT-II DTD. 05/09/2001 ISSUED FROM THE OFFICE OF THE 5TH RESPONDENT.

EXT.P13: COPY OF REPRESENTATION DTD. 22/11/2001 TO THE 5TH RESPONDENT.

EXT.P14: COPY OF REPRESENTATION DTD. 08/01/2002 TO THE 5TH RESPONDENT.

EXT.P15: COPY OF REPRESENTATION DTD. 07/03/2002 TO THE 5TH RESPONDENT.

EXT.P16: COPY OF ORDER BEARING NO.16-1/2001-STG-II DTD. 24/05/2002 ISSUED FROM THE OFFICE OF THE 1ST RESPONDENT.

EXT.P17: COPY OF REPRESENTATION DTD. 10/07/2002 ADDRESSED TO THE 1ST RESPONDENT.

EXT.P18: COPY OF REPRESENTATION DTD. 31/01/2003 ADDRESSED TO THE 5TH RESPONDENT.

EXT.P19: COPY OF ORDER BEARING NO.T-III/4-25/STS/2002 DTD. 17/02/2003 ISSUED BY THE 5TH RESPONDENT.

EXT.P20: COPY OF REPRESENTATION DTD. 26/02/2003 ADDRESSED TO THE 2ND RESPONDENT.

EXT.P21: COPY OF REPRESENTATION DTD. 26/02/2003 ADDRESSED TO THE 5TH RESPONDENT.

EXT.P22: COPY OF REPRESENTATION DTD. 14/01/2004 ADDRESSED TO THE 3RD RESPONDENT.

EXT.P23: COPY OF ORDER BEARING NO.ST-III/4-25/STS/2003 DTD. 13/04/2004 ISSUED BY THE 5TH RESPONDENT.

EXT.P24: COPY OF THE MEMO NO.ST/165/98-9951 DTD. 27/12/99 ISSUED ON BEHALF OF GENERAL MANAGER, TELECOM.

EXT.P25: COPY OF THE HON'BLE SUPREME COURT JUDGEMENT DTD. 22ND SEPTEMBER, 1992 IN CIVIL APPEAL NO.3933/1992.

EXT.P26: COPY OF MEMO NO.STA/1-7/9311(II) DTD. 20/05/93 ISSUED FROM THE OFFICE OF THE CHIEF GENERAL MANAGER, TELECOM.

/TRUE COPY/

P.S.TO JUDGE

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THOTTATHIL B. RADHAKRISHNAN, J.

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WP(C).No.20147 of 2004-W

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Dated this the 27th day of September, 2007.

JUDGMENT

1. The petitioner moved the Central Administrative Tribunal, Ernakulam and obtained Ext.P3 judgment in relation to the question of his transfer on promotion. Though the Tribunal's order was essentially in his favour by virtue of proceedings that came thereafter before the Apex Court leading to Ext.P25 judgment, the petitioner could not enjoy the benefit of Ext.P3 judgment. Ultimately, by the time Ext.P25 judgment was issued by the Apex Court leaving open the issues, the petitioner faced disciplinary proceedings on counts which led to imposition of a major penalty. After suffering such penalty, it goes without saying that he was entitled to be

considered for being promoted. Such promotion on reconsideration following the directions in Ext.P25 could not be denied to the petitioner merely on account of Ext.P3 judgment of the Tribunal. This is because, what was left open for consideration of the Department by Ext.P25 judgment of the Apex Court was not merely the case of the respondent therein but that of all persons who would be involved in the process of consideration for promotion. This has a necessary corollary. It means that notwithstanding Ext.P3 judgment, the petitioner was entitled to be considered for promotion.

2. In the result, this writ petition is disposed of directing that the claim of the petitioner shall be considered by the official respondents with effect from the due date that would inure to him on account of any promotions granted overlooking his legitimate entitlements. This shall be done within a period of three months from the date of receipt of a copy of this judgment and a representation of

the petitioner claiming the exact grade to which he was entitled to be promoted.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

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